



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 12, 2000

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-26

Joel Deckard  
Citizens for Deckard  
4263 Losco Road  
#1326  
Jacksonville, FL 32257

Dear Mr. Deckard:

This responds to your letter dated September 5, 2000, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the payment by a State party committee to a Federal candidate of an amount equal to a State party assessment that the candidate previously paid to the State.

***Background***

You are the Reform Party nominee in the State of Florida for the United States Senate, and Citizens for Deckard ("the Deckard Committee") is your principal campaign committee.<sup>1</sup> Florida State law requires that each person seeking to qualify for the ballot for nomination or election to any office (except for persons who wish to file by the petition method) shall pay a qualifying fee to the Florida Department of State, consisting of a filing fee, an election assessment, and a party assessment. The qualifying fee totals six percent of the annual salary of the office sought, including two percent of the salary for the party assessment. Fla. Stat. Ann. §99.092 (West 2000). The qualifying fee must be paid between 120 and 116 days prior to the primary (held this year on September 5). Fla. Stat. Ann. §99.061(1). After deducting a seven percent surcharge from the party assessment, the Department of State remits the remainder of the party assessment to the State committee of the candidate's political party. *See* Fla. Stat. Ann. §§99.103(2) and

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<sup>1</sup> Citizens for Deckard filed its statement of organization with the Commission on May 21, 1999.

215.20. As an alternative to paying the party assessment to the Department of State, the candidate may pay the assessment directly to the party. Then, when the candidate pays his filing fee and election assessment, he submits to the State the original or signed duplicate of the receipt for the party assessment. *See* Fla. Stat. Ann. §99.092(1); *see also* §99.021(b).

In early May 2000, the Deckard Committee paid a party assessment to the Department of State totaling \$2,734.<sup>2</sup> After deducting the seven percent surcharge, the Department of State remitted \$2,542 to the Florida Reform Party Executive Committee (“State Committee”) in late June, 2000. On July 1, the State Committee sent a check in that amount to the Deckard Committee. At the time, both the State Committee and the Deckard Committee considered this to be a refund to the candidate of the assessment levied on behalf of the party and exempt from the definition of “contribution” because the party assessment was a ballot access fee.

Documents submitted by you and by the treasurer of the State Committee, as well as reports filed by the State Committee under Florida State law, present an “audit trail” of the movement of the funds. When the Department of State remitted \$2,542 to the State Committee, it also remitted the party assessments paid by the other two Reform Party Federal candidates on the ballot in Florida for a total of \$7,627, and stated in a letter that this amount represents the filing fees for the Federal candidates for the ballot.<sup>3</sup> Your request includes a document issued by the Department of State disclosing that this remittance represents three distributions to the party of \$2,542 from the assessments paid by each of the candidates. The party executive committee met by teleconference on June 26 and decided to “rebate the states portion to the candidates by individual check in the appropriate amounts.” On July 1, the State Committee sent \$2,542 to each of the three Federal candidates, including you. It appears that the last funds received by the State Committee before sending the funds to each of the candidates was the \$7,627 remittance, and that the State Committee made no disbursements between the receipt of the remittance and the disbursements to the Federal candidates.

After discussions in August with the Commission’s Office of General Counsel as to how to characterize and report the payment to the Deckard Committee, the treasurer of the State Committee sent you a letter, dated August 25, stating that the July 1 payment was an excessive contribution to the Deckard Committee and that the amount in excess of the Act’s limits should be refunded to the State Committee. You ask whether the July 1 payment from the State Committee to the Deckard Committee should be characterized as a contribution and thus subject to the Act’s limits. You state that, pending the issuance of an advisory opinion, the Deckard Committee is withholding a refund of the amount in excess, but will refrain from spending that amount.

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<sup>2</sup> Along with the party assessment, Citizens for Deckard also paid a filing fee and an election assessment. The total payment made was \$8,202.

<sup>3</sup> All dollar figures in this opinion are stated without cents, which affects the total of the party assessments remitted by the State and sent to the three Reform Party Federal candidates.

### ***Act and Commission regulations***

Under the Act and Commission regulations, the term “contribution” is defined as any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office, and the term “expenditure” is defined as any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1). The Act and regulations provide for exceptions to these terms with respect to certain payments related to ballot access. An exception to the term “contribution” applies to payments made by a candidate or his authorized committee as a condition of ballot access, and to payments received by any political party committee as a condition of ballot access. 2 U.S.C. §431(8)(B)(xiii); 11 CFR 100.7(b)(18). An exception to the term “expenditure” applies to amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committee as a condition of ballot access. 2 U.S.C. §431(9)(B)(x); 11 CFR 100.8(b)(19).

### ***Analysis***

Under the exceptions set out in the Act and regulations, the payment of the party assessment fee by the Deckard Committee to the Florida Department of State, which was then remitted to the State Committee, would not be an expenditure by the Deckard Committee or a contribution by the Deckard Committee to the State Committee. 2 U.S.C. §431(8)(B)(xiii) and (9)(B)(x); 11 CFR 100.7(b)(18) and 100.8(b)(19); *see also* Advisory Opinion 1988-33.

Under the specific circumstances presented, it appears that the refund of the assessments to the Deckard Committee was merely the end point of several transactions made in the ballot access payment process. The payment by the Deckard Committee through the State of Florida to the State Committee was required by State law for ballot access, and the funds disbursed by the State Committee to the Deckard Committee, which were not contributions or expenditures to begin with, were a pass-through of the same amount (minus the surcharge deducted by the State) initially paid by the Deckard Committee. Moreover, although a committee’s consistent policy is often irrelevant to whether a particular transaction is lawful, it is somewhat significant here that the payment by the State Committee was part of a policy to refund party assessments to all of the Reform Party Federal candidates on the Florida ballot who paid the assessment.<sup>4</sup> Under the circumstances, the Commission views the payment by the State Committee as a refund tied to the ballot access process, and not a contribution; the Deckard Committee should report it as a receipt offset to operating expenditures. *See* 11 CFR 104.3(a)(3)(ix)(A) and (4)(v), and 104.8(d)(4).

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<sup>4</sup> Information provided by the treasurer of the State Committee indicates that the committee also refunded the party assessments to all of the Florida Reform Party non-Federal candidates who paid them.

The Commission emphasizes that its characterization of the State Committee's payment to the Deckard Committee as a refund tied to the ballot access process, and not a contribution, is based on the specific circumstances presented. This opinion should not be construed as generally exempting, from the definition of "contribution," payments or reimbursements to an authorized political committee or candidate to assist the candidate in paying ballot qualifying fees and assessments.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

Sincerely,

(signed)

Darryl R. Wold  
Chairman

Enclosure (AO 1988-33)